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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS, *et. al.*¹,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

Jointly Administered

Hearing Date: February 4, 2019, 10:00 a.m. ET
Objection Deadline: January 26, 2019, 4:00 p.m. ET

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

**RESPONSE OF EVERLAST WORLD'S BOXING HEADQUARTERS CORP. TO THE
DEBTORS' CURE COSTS WITH RESPECT TO POTENTIAL ASSUMPTION AND
ASSIGNMENT OF TRADEMARK LICENSE AGREEMENT AND RESERVATION OF
RIGHTS IN CONNECTION WITH GLOBAL SALE TRANSACTION**

Everlast World's Boxing Headquarters Corp. ("Everlast" or "Licensor"), by and through its undersigned counsel, hereby submits this (i) response to the cure amount proposed in connection with the potential assumption and assignment of the Debtors' (as defined below) Trademark License Agreement with Everlast, as listed in the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Global Sale Transaction* [Docket No. 1731] (the "Assumption and Assignment Notice"), and (ii) reservation of rights with respect to the pending sale of assets to Transform Holdco LLC ("Buyer"). In support of this limited objection and reservation of rights, Everlast states as follows:

1. On August 10, 2010, Everlast as licensor and debtors Sears, Roebuck, and Co. and Kmart Corporation (collectively, "Debtors" or "Licensees") entered into that certain Trademark License Agreement (as amended by a First Amendment thereto dated October 8, 2013 and a Second Supplemental Deed of Amendment thereto dated November 11, 2015, the "License Agreement"). Pursuant to the License Agreement, Licensor licensed certain intellectual property to Debtors on the terms set forth in the License Agreement.

2. Debtors and their parent Sears Holding Corporation, among others, and Buyer have entered into that certain Asset Purchase Agreement dated as of January 17, 2019 (the "APA") [Exhibit B to Docket N. 1730].² Pursuant to Section 2.9 of the APA, Buyer has until

² Undefined terms herein have the same definitions set forth in the APA.

60 days after the Closing Date (but no later than May 3, 2019) to take assignment of Contracts that Buyer does not assume as of the Closing Date.

3. Under the Assumption and Assignment Notice, Debtors have listed the License Agreement with an alleged cure cost of \$683,206. This amount is not correct. Sections 4.1 and 4.2 of the License Agreement set forth the timing of due dates for royalty payments (within 30 days after the end of each fiscal quarter for royalties based on actual revenues for the prior quarter; within 30 days after the end of each fiscal year for the difference between minimum guaranteed royalty payments and royalty payments based on actual revenues). The fiscal year under the License Agreement is February 1 through January 31.

4. As reflected on the charts attached hereto as Exhibit "A", assuming Buyer takes an assignment of the License Agreement prior to March 4, 2019, which is the first business day 30 days after January 31, 2019 (irrespective of when the Closing Date occurs), (i) cure costs as of the time of assumption and assignment will be \$592,183.39, and (ii) on March 4, 2019, Buyer will have to make another payment to Licensor of \$2,158,856.55.³ If Buyer takes an assignment of the License Agreement between March 4, 2019 and May 3, 2019 (irrespective of when the Closing Date occurs), the cure costs will be \$2,751,039.94.⁴

5. Notwithstanding Section 2.9 of the APA, Licensor reserves and does not waive the right under Bankruptcy Code Section 365(d)(2) to seek to compel assumption or rejection of the License Agreement at any time, with assumption or rejection to be effective prior to the Designation Deadline.

³ This amount assumes that royalties based on actual revenues for the fourth quarter of fiscal year 2018 (November 1, 2018 through January 31, 2019), when added to royalties based on actual revenues for the first, second and third quarters of fiscal year 2018, will be equal to or less than the minimum guaranteed annual royalties of \$4,500,000.00. If royalties for fiscal year 2018 based on actual revenues for fiscal year 2018 are higher than \$4,500,000.00, this number will be higher.

⁴ See footnote 3.

Dated: January 25, 2019
New York, New York

**SHEPPARD MULLIN RICHTER &
HAMPTON LLP**

By: /s/ Alan M. Feld
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*Counsel for Everlast World's Boxing Headquarters
Corp.*

CERTIFICATE OF SERVICE

I certify that on January 25, 2019, this office caused the following document:

RESPONSE OF EVERLAST WORLD'S BOXING HEADQUARTERS CORP. TO THE
DEBTORS' CURE COSTS WITH RESPECT TO POTENTIAL ASSUMPTION AND
ASSIGNMENT OF TRADEMARK LICENSE AGREEMENT AND RESERVATION OF
RIGHTS IN CONNECTION WITH GLOBAL SALE TRANSACTION

to be served upon all parties via the Court's CM/ECF electronic filing system.

/s/ Shadi Farzan
Shadi Farzan

Exhibit A

Sears/Kmart Monies Owed Under Everlast Worldwide License	Earned Amount*	Amount Paid/Collected	Amount Still Owed
Q1 (Feb-April 2018)	\$786,671.33	\$785,236.90	\$1,434.43
Q2 (May-July 2018)	\$770,232.34	\$769,634.40	\$597.94
Q3 (Aug - Oct 2018)	\$784,239.78	\$194,088.76 **	\$590,151.02
Total	\$2,341,143.45	\$1,748,960.06	\$592,183.39

* Under the License Agreement, Sears/Kmart has annual minimum guaranteed royalty payment of \$4,500,000.00

** Sears/Kmart paid \$194k for post Chap 11 petition earned royalties (Oct 15 - Oct 31, 2018).

Sears/Kmart Monies Owed Under Everlast Worldwide License			Amount Paid/Collected	AMGR Difference*
Total	AMGR Owed	Earned Amount		
	\$4,500,000.00	\$2,341,143.45	\$1,748,960.06	\$2,751,039.94

* \$4,500,000 less \$1,748,960.06